IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 348 OF 2007
WITH
CIVIL APPLICATION NO. 275 OF 2007
IN
C.R.A.NO. 348/2007

Shri M.A.Sakarbagwalla & Anr. .. Petitioners.

V/s.

Gurucharan Singh Mago
(since deceased)
1.a. Maninder Singh Mago & Ors. .. Respondents.

Mr.A.Y.Sakhare, Sr.Counsel i/by U.N.Mehta for the Petitioners.

Mr. V.A.Thorat i/by Vipin Kamadi for the Respondents Nos. 1A to 1C & 2.

CORAM : S. A. BOBDE, J.

DATED : 29TH AUGUST, 2007.

P.C. :-

. Heard. Admit the Civil Revision Application. Taken up for final disposal by consent of the parties.

2. The petitioners -tenants have approached this court against the concurrent findings of two courts below that they had carried the material additions and alterations in the suit premises and that there is change of user of the garage and that they have created

a nuisance in the premises. The other grounds such as arrears and bonafide requirement of the landlord have been rejected by the courts below.

3. It is a common ground that even if the finding in respect of one of the grounds is liable to be upheld then the petitioners would be liable to suffer a decree. The only ground that was urged by the learned counsel for the petitioners is the ground pertaining to the additions and alterations unauthorizedly carried out by the defendants -tenants in the suit premises. The material additions and alterations alleged to have caused damage to the suit premises are : removing doors and window frames, raising of height of the windows, raising height of the flooring and causing damages to the walls as well as to the ceiling of the kitchen. Before the trial court, the petitioners' objection inter alia was that all the material additions and alterations have not been specifically pleaded by the plaintiffs. The trial court rejected this ground. Apparently, it appears that certain alterations were carried out by the petitioners during the pendency of the suit. Therefore, there is no substance in the grievance of want of pleadings.

4. After the trial court found that there were

material additions and alterations, the appellate court considered the said findings and came to the conclusion that indeed there are material additions and alterations. The appellate court relied on the commissioner's report alongwith the photographs at Exh. 'LL' collectively. There is clear finding to the effect, supported by the said report alongwith the photographs, that there is a major work of additions and alterations of permanent nature in the suit premises for which the permission either of the plaintiffs or of the BMC was not taken. This finding is also based on the evidence of one Civil Engineer which show that the first floor premises have been damaged substantially. The findings, therefore, are based on cogent evidence on record.

5. Mr. Sakhare, the learned counsel for the petitioners submitted that the alterations in question cannot amount to the material alterations within the meaning of clause 13(1)(b) of the Bombay Rent Act. The findings of the trial court that there are material alterations are rendered with reference to the particular alterations and evidence such as the commissioner's report and the civil engineer's report in that regard. It cannot be, therefore, said that there is any material irregularity in arriving at the said

findings by the courts below. Indeed the jurisdiction of the courts below is not questioned here. In the circumstances, there is no question or ground for interference under section 115 of the code of civil procedure. In this view of the matter, the civil revision application is hereby dismissed.

6. At this stage Mr. Sakhare, the learned counsel for the petitioners prays for a stay of execution of the decree to enable the petitioners to approach the Supreme Court of India. Mr. Thorat, the learned counsel for the respondents points out that the petitioners have lost possession of the premises and are no longer residing there. There is no dispute to this. However, the learned counsel for the petitioners states that some material belonging to the petitioners is lying in the premises. Thereafter, this court has granted status-quo. In the circumstances, it would be appropriate in the interest of justice to allow the petitioners four weeks' time to approach the Hon'ble Supreme Court. Therefore, status-quo granted by this court shall continue for a period of four weeks from today.

7. In the meanwhile, the petitioners are at liberty to move their articles from the premises in question and

without any hindrance from the respondents. The petitioners are directed not to create any third party rights or in any manner attempt to part with possession of the premises to any third party for a period of four weeks from today.

8. In view of the dismissal of the civil revision application, nothing survives in the civil application. Disposed of accordingly.

(S.A.BOBDE,J.)

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